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3/12/02

Hearing: January 24, 2002

Paper No. 16
TEH

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re **CML Northern Blower Inc.**

Serial No. 75/462,453

Julie A. Greenberg and John G. Posa of Gifford, Krass, Groh,
Sprinkle, Anderson & Citkowski, P.C. for CML Northern Blower Inc.

Howard Smiga, Trademark Examining Attorney, Law Office 102
(Thomas V. Shaw, Managing Attorney).

Before Seeherman, Holtzman and Drost, Administrative Trademark
Judges.

Opinion by Holtzman, Administrative Trademark Judge:

An application has been filed by CML Northern Blower Inc. to register FANFINDER as a mark for goods which were subsequently amended to read, "computer software for use in identifying industrial fan specifications, output performance, efficiency, sound power, and pressure levels for use in fan selection."¹

¹ Serial No. 75/462,453; filed April 6, 1998 on the Principal Register alleging dates of first use and first use in commerce on January 9, 1998.

The Trademark Examining Attorney refused registration under Section 2(e)(1) of the Trademark Act on the ground that applicant's mark is merely descriptive of applicant's goods.

When the refusal was made final, applicant appealed. Briefs have been filed and an oral hearing was held.²

It is the Examining Attorney's position that the term FANFINDER, in relation to applicant's software, is merely descriptive of the most important and central feature of those goods. Specifically, the Examining Attorney contends that the software allows the user to enter certain variables relating to the type of fan the user needs and that based on this input, the software "finds" the fan or the right type of fan to meet those needs. To support his position, the Examining Attorney refers to applicant's printout of certain pages from its web site. This printout includes sample program screens and an information sheet containing the following description of the software:

FanFinder™ helps make fan selection quick and easy:

FanFinder™ provides several different selections for a given operating point, giving a range of possible sizes for optimum efficiency. Performance data includes RPM, BHP, inlet and outlet velocity,...

Detailed sound characteristics are calculated based on specific installation parameters. ...

² At the oral hearing, applicant's counsel confirmed that applicant's reference to the original identification of goods in its appeal brief was in error and that applicant is relying on the amended identification of goods indicated above.

Detailed fan curves are available to assist the user in fan selection. ...

FanFinder™ automatically determines wheel diameter, wheel width, horsepower, RPM and maximum fan speed. ...

Belt or direct drive selections may be calculated for any fan speed.

Selections may be saved for future reference and modifications.

As further support for his position, the Examining Attorney quotes from applicant's brief wherein applicant describes its goods as "a complex computer system to help match up desired specifications with products" and explains that its computer program "performs complex data matching and specification coordination to find systems which are compatible" (Examining Attorney's brief, p. 6, citing applicant's brief, pp. 2, 3). The Examining Attorney also relies on dictionary definitions of "find" as, inter alia, "to come upon after a search" and "to discover or ascertain through observation, experience, or study."³

Applicant, however, argues that FANFINDER is only suggestive of the functions its software performs. Applicant maintains that while the software program generates data, compares parameters and specifications, generates graphs, conducts measurements, and

³ *The American Heritage Dictionary of the English Language, Third Edition 1992*; electronic version.

performs many other functions, "not a single of its functions is to 'find fans'." Further, according to applicant, while the software program "is intended to aid a user in the selection of a fan," the program "does not locate, or find fans, or participate in the locating of fans." (Response to Office action dated September 24, 1999, p. 2). Applicant admits that its computer program "performs complex data matching and specification coordination to find systems which are compatible" but maintains that there is no evidence to establish that these functions are referred to as "finding fans." Applicant argues that, in any event, the descriptive nature of the mark was determined "after the nature of the goods has been scrutinized, and now is understood."

A term is merely descriptive within the meaning of Section 2(e)(1) if it immediately conveys knowledge of the ingredients, qualities, or characteristics of the goods with which it is used. In re Gyulay, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987). On the other hand, a term is suggestive if, in the context of those goods, a purchaser must use imagination, thought, or some type of multi-stage reasoning to understand the term's significance. See Plyboo America Inc. v. Smith & Fong co., 51 USPQ2d 1633 (TTAB 1999).

The question of whether a particular term is merely descriptive must be determined not in a vacuum or on the basis of

speculation, but in relation to the goods for which registration is sought. See *In re Engineering Systems Corp.*, 2 USPQ2d 1075 (TTAB 1986). Thus, it is first necessary to understand the nature of applicant's software. Applicant has expressly denied, both in its brief and at the oral hearing, that the function or purpose of its software is to "find" fans within the ordinary meaning of that word. Moreover, it is not at all clear from the record in this case, and in particular the web site materials submitted by applicant, that finding fans is the primary function or any one of the functions the software performs. It is unclear from this evidence that FANFINDER software "finds" a fan either in the sense that it locates a fan for a customer or finds a particular make, model or type of fan based on a customer's needs.

The first of applicant's sample program screens, the "FanFinder™ Main Menu," displays what appears to be a list of performance variables for the user to enter or select. In response to the user's selections, a screen labeled "FanFinder™ Selection Details" displays information relating to certain performance characteristics of the fan including its wheel diameter, width, outlet velocity and speed. However, the information does not appear to include the identification of any particular make or model of fan. The designation "Design 5020" appears at the top of this screen but the meaning of that term is

ambiguous and the Examining Attorney did not inquire as to its significance. Moreover, when applicant's counsel was asked at the oral hearing whether "Design 5020" represented a particular fan design or model, applicant's counsel indicated that he believed it did not.

Rather than finding or locating any particular fan or type of fan, it appears that applicant's FANFINDER software merely identifies the performance characteristics of a suitable fan. In this way, the software functions as an information gathering tool which may, as the Examining Attorney quotes from applicant, "help match up desired specifications with products" or "perform[] ... data matching and specification coordination to find systems which are compatible" and to that extent, the software may, as stated on applicant's web page, help make the fan selection process easier. However, the "help" this software provides falls a step short of finding a fan and that step is sufficient to make FANFINDER suggestive rather than merely descriptive of applicant's software.

We have made our determination that the mark is not descriptive based on the record before us and keeping in mind that any doubt on the issue of mere descriptiveness is resolved in favor of applicant. Any person who believes that he would be damaged by the registration will have an opportunity to file an opposition against the registration of the mark and to present

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evidence, usually not present in the ex parte application, on that issue. See *In re Merrill Lynch, Pierce, Fenner, and Smith Inc.*, 828 F.2d 1567, 4 USPQ2d 1141, 1144 (Fed. Cir. 1987) citing *In re Gourmet Bakers, Inc.*, 173 USPQ 565 (TTAB 1972).

Decision: The refusal to register is reversed.